

Editor's note: Reconsideration denied -- See 91 IBLA 191 (March 31, 1986); See 91 IBLA 191 for litigation history.

WILLIAM REPPY
CARMON H. OLSON

IBLA 84-654
IBLA 84-894

Decided December 19, 1985

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications. U-054478.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3112.2-4, requiring disclosure of the name of the filing service that assisted the applicant.

APPEARANCES: William Reppy, pro se; Oscar J. Sorlie, Jr., Esq., Fergus Falls, Minnesota, for Carmon H. Olson.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

William Reppy appeals the May 17, 1984, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease application U-54478. Reppy's application was the first drawn for Utah parcel UT-332 in the September 1983 simultaneous oil and gas lease drawing.

Carmon H. Olson appeals the August 7, 1984, decision of BLM rejecting his simultaneous oil and gas lease application U-54478. Olson's application for Utah parcel UT-332 was the first drawn in the September 1983 simultaneous oil and gas lease reselection drawing, held July 26, 1984.

BLM rejected the applications because neither applicant indicated on the lease application the name of the filing service by which he was aided, as required by 43 CFR 3112.2-4. We have consolidated these appeals, sua sponte, because they involve similar facts and issues.

Both Reppy and Olson employed Oil and Gas Properties, Inc., of North Miami, Florida, a filing service, to assist them in entering the simultaneous oil and gas lease drawing. Olson paid \$ 6,000 to Oil and Gas Properties,

Inc., in August 1983 for its services. Reppy initially paid \$ 5,000 to the filing service, and later paid an additional \$ 40,000.

Olson signed and partially completed his application. Reppy only signed his application because Oil and Gas Properties, Inc., informed him that was his only responsibility. Neither applicant nor the filing service filled in the space marked "Filing Service's Full Name, Address and Zip Code (If Applicable)" on Part B of the automated simultaneous oil and gas lease application, Form 3112-6a.

The regulation involved, 43 CFR 3112.2-4, provides: "Any applicant receiving the assistance of any person or entity which is in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program shall indicate on the lease application the name of the party or filing service that provided assistance." Such a "person or entity" is defined by 43 CFR 3112.0-5 as "those enterprises, commonly known as filing services, which sign, formulate, prepare or otherwise complete or file applications for oil and gas leases for consideration." 43 CFR 3112.5-1(a) provides that any application determined by adjudication as not meeting the requirements of the regulations in Subpart 3112 "shall be rejected."

Appellants do not contend that Oil and Gas Properties, Inc., is not a filing service or that their applications indicated its name. Instead, they explain they were unfamiliar with the requirements applicable to the simultaneous oil and gas leasing program and relied on the filing service to properly complete their applications. Appellants say they did not intend to mislead or defraud BLM. They claim the requirement to indicate the name of a filing service on the application is a minor technical matter, and rejection is an extreme sanction for failure to comply. Appellant Reppy argues that rejecting the application of one who innocently omits the name of a filing service does little to achieve the purpose of the regulation, works an additional hardship on someone who has already been victimized, and in effect makes BLM the accomplice of a careless or unscrupulous filing service. Reppy adds that the Wyoming State Office was not authorized to issue the decision; that he was deprived of due process in not being afforded an opportunity to submit reasons to BLM why it should not reject his application; and that the application and accompanying check indicated he had assistance in completing the application and that BLM readily identified who provided it. In sum, appellants urge that BLM's decisions are not fair and that the Board should do equity on their behalf.

However sympathetic we are to the appellants' circumstances, we cannot agree. Applicants are presumed to know requirements published in the Federal Register and cannot excuse their noncompliance by reliance on others. Federal Crop Insurance Co. v. Merrill, 332 U.S. 380 (1947); John G. O'Leary, 86 IBLA 131 (1985). The regulation involved is not merely a technicality, and rejection is appropriately required to enforce it. It complements the regulations that prohibit a person from having an interest in more than one application to lease a parcel or having more than one opportunity to obtain a lease by making multiple filings (see 43 CFR 3112.2-1(f), 3112.5-1(b)) by

requiring disclosure of information that would lead BLM to violations of these prohibitions. Rejection of an application that omits the required information directly discourages a potentially successful applicant from omitting it. Thus, unlike the requirement that an application be signed that was deemed insubstantial in Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), the requirement that a filing service be named is an integral part of the system designed to provide every applicant for a simultaneous oil and gas lease an equal chance to obtain a lease and to prevent anyone from obtaining more than an equal chance. Failure to provide this information in an application is a substantive defect for which the application must be rejected. John G. O'Leary, *supra*; Carl S. Matuszek, 86 IBLA 124, 126-28 (1985). *See also* Satellite 8211104, 89 IBLA 388, 395-97 (1985).

As for appellants' remaining arguments, we note that by memorandum dated February 10, 1984, the Director of BLM granted the Wyoming State Office authority to reject applications where the filing service assistance block is not completed (Instruction Memorandum No. 84-269 at 3). There is no legal impediment to this delegation of authority. The right of appeal to the Board from adverse decisions of BLM satisfies appellants' rights to due process of law before a final decision by the Department. Robert J. King, 72 IBLA 75 (1983). Finally, the regulation calls for the filing service to be named on the application. The fact that BLM discovered who the filing service was from extrinsic information in this case does not mean that it could do so in other cases, and it is more practical to require disclosure of filing service assistance by all applicants than to require BLM to determine whether such assistance was rendered to successful applicants. John G. O'Leary, *supra* at 134; Carl S. Matuszek, *supra* at 127.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Will A. Irwin
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge

